UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte HERBERT V. JOINER, PRAVEEN RAGHURAMAN, and
RAVI VERMA

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Appeal 2008-1017
Application 10/029,591
Technology Center 3600

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Decided: May 29, 2008

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Before LINDA E. HORNER, ANTON W. FETTING, and
JOHN C. KERINS, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Herbert V. Joiner et al. (Appellants) seek our review under 35 U.S.C.
§ 134 of the final rejection of claims 1-34. We have jurisdiction under
35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The Appellants' claimed invention relates to charging for enterprise network analysis (Spec. 1:7-8). Claims 1 and 26, reproduced below, are representative of the subject matter on appeal.

> 1. A method for charging for network analysis, and executing on a computer including a computer readable medium, comprising;
>
> (a) collecting network traffic information utilizing a plurality of agents;
>
> (b) consolidating the network traffic information utilizing a plurality of host controllers coupled to the agents;
>
> (c) reporting on the network traffic information to a user utilizing a plurality of zone controllers coupled to the host controllers; and
>
> (d) determining a reoccurring fee associated with the reporting based on a number of at least one of the agents, the host controllers, and the zone controllers.
>
> 26. A method for charging for distributed network analysis, and executing on a computer including a computer readable medium, comprising;
>
> collecting network traffic information utilizing a plurality of information collectors;

consolidating the network traffic information utilizing at least one information collector manager coupled to the information collectors;

reporting on the network traffic information to a user utilizing at least one interface; and

determining a fee associated with the distributed network analysis based on a number of the information collectors.

THE REJECTIONS[1]

The Examiner relies upon the following as evidence of unpatentability:

Turek	US 6,021,439	Feb. 1, 2000
Furukawa	US 6,145,011	Nov. 7, 2000
Wolf	US 6,278,694 B1	Aug. 21, 2001

The following rejections are before us for review:

1. Claims 1-29 are rejected under 35 U.S.C. § 103(a) as unpatentable over Wolf and Turek.

2. Claims 30-34 are rejected under 35 U.S.C. § 103(a) as unpatentable over Wolf, Turek, and Furukawa.

ISSUES

The issues before us are whether the Appellants have shown that the Examiner erred in rejecting claims 1-29 as unpatentable over Wolf and

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[1] The Examiner withdrew the final rejection of claims 1-8, 25, and 26 under 35 U.S.C. § 101 (Ans. 14).

Turek and whether the Appellants have shown that the Examiner erred in
rejecting claims 30-34 as unpatentable over Wolf, Turek, and Furukawa.
These issues turn on whether the prior art discloses determining a
reoccurring fee based on a number of at least one of agents, host controllers,
and zone controllers or determining a fee based on a number of information
collectors. These issues also turn on whether the prior art discloses using a
plurality of zone controllers coupled to host controllers to report on network
traffic information to a user.

<div align="center">FINDINGS OF FACT</div>

We find that the following enumerated findings are supported by at
least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d
1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for
proceedings before the Office).

1. Wolf discloses a network 10 having remote probes P1-P3 which
   monitor network communications between pairs of network
   addresses and transmit their monitoring data to a network
   manager 20 (Wolf, col. 3, ll. 37-40, Fig. 1).

2. The network manager contains a memory 42 that stores three
   programs X, Y, and Z. The program X controls polling and
   processing of polled monitoring data from probes P1 and P2, and
   the program Y controls polling and the processing of polled
   monitoring data from probe P3. The program Z controls the

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preparation of traffic reports from traffic data stored in a
database 44 (Wolf, col. 5, ll. 2-11).

3. Wolf's network manager 20 uses a single program Z to control the
preparation of traffic reports and thus does not report on network
traffic information using a plurality of zone controllers coupled to
host controllers.

4. Turek discloses monitoring and collecting quality-of-service data
in a computer network (Turek, col. 1, ll. 6-9).

5. Turek describes that quality-of-service information may include a
broken hypertext link, a server response time exceeding some
threshold value, an Internet delay exceeding some predetermined
value, an applet byte code verification exceeding some threshold
time period, or generic information about a particular user's
experience with a Web page (e.g., how long the user spends
browsing the page, which links are activated, which links are not
used, etc.) (Turek, col. 2, ll. 46-56).

6. A proxy server 58 collects the quality-of-service information on
behalf of multiple Web servers that subscribe to the service (Turek,
col. 6, ll. 8-9).

7. Turek describes that the server manages the quality-of-service
information on behalf of one or more instrumented Web servers,
perhaps for a service fee, or that a central controller located
elsewhere in the network provides analysis for a fee (Turek, col. 8,
ll. 38-45).

8. Turek does not disclose that the fee is "based on a number of at least one of the agents, the host controllers, and the zone controllers" nor does it disclose that the fee is "based on a number of the information collectors."

9. Furukawa discloses a "network charging system" wherein charging is performed by counting information computer system (ICS) user frames to be sent or received when a communication is made or by counting the transferred information in the ICS user frame (Furukawa, col. 21, l. 66 – col. 22, l. 4).

10. Furukawa does not disclose charging a fee based on the number of agents, host controllers, zone controllers, or information collectors that collect information about network traffic.

PRINCIPLES OF LAW

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18

(1966). *See also KSR*, 127 S.Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992); *see also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *See Oetiker*, 977 F.2d at 1445; *see also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *Id.*

ANALYSIS

Rejection of claims 1-29 as unpatentable over Wolf and Turek

Independent claims 1, 9, 17, and 25 each require using a plurality of zone controllers coupled to host controllers to report on network traffic information to a user. These independent claims also require determining a reoccurring fee associated with the reporting based on a number of at least one of the agents, host controllers, and zone controllers.

The Examiner found the reporting function disclosed in Wolf (Ans. 3, citing Wolf, Figs. 7A and 8). While we agree that Wolf discloses producing a traffic report, it does so using a single program in the network manager and does not use a plurality of zone controllers as claimed (Facts 1-3).

The Examiner further found that Turek discloses collecting information in a computer network and providing network analysis for a fee (Ans. 4, citing Turek, col. 8, ll. 38-45). While Turek discloses charging a service fee to collect and analyze quality-of-service information (Facts 4-7), it does not disclose that the fee is "based on a number of at least one of the agents, the host controllers, and the zone controllers" (Fact 8). Further, the Examiner has failed to articulate an apparent reason with rational underpinning explaining why one having ordinary skill in the art would have been led, in view of the teachings of Wolf and Turek, to modify the system of Wolf to determine a fee based on a number of at least one of the agents, host controllers, and zone controllers as claimed. Rather, the Examiner concluded that because the fees disclosed in Turek "are determined according to Web server, and the Web server handles the communication in the network, the fee is therefore associated with the agents, the host controller and zone controllers" (Ans. 15). We disagree. Turek does not disclose how the fees for its quality-of-service analysis are determined, and does not teach or suggest determining the fee based on the number of Web servers or based on a number of agents, host controllers, or zone controllers. We see no reason why one having ordinary skill in the art, confronted with the teaching in Turek of charging a fee for a network analysis service, would have been led to determine the fee in the manner claimed absent the use of hindsight. As such, we do not sustain the Examiner's rejection of claims 1, 9, 17, and 25, or claims 2-8, 10-16, and 18-24, which depend therefrom.

Independent claims 26 and 28 similarly recite determining a fee "based on a number of the information collectors," where the information collectors collect network traffic information. While Turek discloses charging a service fee to collect and analyze quality-of-service information (Facts 4-7), it does not disclose that the fee is "based on a number of the information collectors" as claimed (Fact 8). Turek does not disclose how the fees for its quality-of-service analysis are determined, and does not teach or suggest determining the fee based on the number of information collectors. We see no reason why one having ordinary skill in the art, confronted with the teaching in Turek of charging a fee for a network analysis service, would have been led to determine the fee in the manner claimed absent the use of hindsight. As such, we do not sustain the Examiner's rejection of claims 26 and 28, or claims 27 and 29, which depend therefrom.

Rejection of claims 30-34

Claims 30-34 depend from claim 1. The rejection of claims 30-34 further relies on Furukawa. Furukawa discloses a "network charging system" wherein charging is performed by counting ICS user frames to be sent or received when a communication is made, or by counting the transferred information in the ICS user frame (Fact 9). Furukawa does not cure the deficiency of the combination Wolf and Turek, in that Furukawa does not disclose charging a fee based on the number of agents, host

controllers, zone controllers, or information collectors that collect information about network traffic (Fact 10). As such, we do not sustain the Examiner's rejection of claims 30-34 as unpatentable over Wolf, Turek, and Furukawa.

CONCLUSIONS

We conclude the Appellants have shown that the Examiner erred in rejecting claims 1-29 under 35 U.S.C. § 103(a) as unpatentable over Wolf and Turek and erred in rejecting claims 30-34 under 35 U.S.C. § 103(a) as unpatentable over Wolf, Turek, and Furukawa.

DECISION

The decision of the Examiner to reject claims 1-34 is reversed.

REVERSED

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